it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–ISE–2023–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–ISE–2023–30. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–ISE–2023–30 and should be submitted on or before December 22, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–26486 Filed 11–30–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99024; File No. SR–ISE–2023–28]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Options 7

November 28, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 13, 2023, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule at Options 7.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Options 7. Each change is described below.

The Exchange initially filed the proposed pricing changes on November 1, 2023 (SR–ISE–2023–26). On November 13, 2023, the Exchange withdrew that filing and submitted this filing.

Background

Regular Order Fees and Rebates

As set forth in Options 7, Section 3, the Exchange currently has a maker/taker pricing model where all market participants (except Priority Customers)[3] are assessed a uniform Regular Order maker fee of $0.70 per contract for Non-Select Symbol[4] executions that add liquidity on the Exchange, and a uniform Regular Order taker fee of $0.90 per contract for Non-Select Symbol executions that remove liquidity. Priority Customers are currently assessed a $0.86 per contract Regular Order maker rebate in Non-Select Symbols and a $0.00 per contract Regular Order taker fee in Non-Select Symbols. Additionally, all market participants are charged higher Regular Order taker fees for trades in Non-Select Symbols executed against Priority Customers. Specifically, Non-Priority Customers[5] are charged a taker fee of $1.10 per contract for trades executed against a Priority Customer, while Priority Customers are charged a taker fee of $0.86 per contract for trades executed against another Priority Customer.[6]

As it relates to the $0.86 per contract Priority Customer Regular Order maker

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[39] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''Priority Customer'' is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Options 1, Section 1(a)(37).

[4] ''Non-Select Symbols'' are options overlying all symbols excluding Select Symbols. ''Select Symbols'' are options overlying all symbols listed on the Exchange that are in the Penny Interval Program.

[5] ''Non-Priority Customers'' include Market Makers, Non-Nasdaq ISE Market Makers (FarMMs), Firm Proprietary/Broker-Dealers, and Professional Customers.

[6] *See* Options 7, Section 3, note 3.

rebate described above, the Exchange also currently offers Members an additional rebate of $0.14 per contract if they execute more than 0.06% of Regular Order Non-Select Symbol Priority Customer volume (excluding Crossing Orders [7] and Responses to Crossing Orders) [8] calculated as a percentage of Customer Total Consolidated Volume [9] per day in a given month (''Note 15 Incentive'').[10] The Note 15 Incentive is designed to encourage Members to transact in greater Regular Order Non-Select Symbol Priority Customer volume on the Exchange to receive rebates up to $1.00 per contract (*i.e.,* the current $0.86 base maker rebate plus the additional $0.14 Note 15 Incentive).

Complex Order Fees and Rebates

As set forth in Options 7, Section 4, the Exchange currently offers tiered Complex Order Priority Customer rebates for Select Symbols and Non-Select Symbols based on the Priority Customer Complex Tier achieved.[11] The tiered Complex Order Priority Customer rebates for Select Symbols and Non-Select Symbols are presently as follows:

TOTAL AFFILIATED MEMBER OR AFFILIATED ENTITY COMPLEX ORDER VOLUME

[Excluding Crossing Orders and Responses to Crossing Orders]

Priority customer complex tier	Calculated as a percentage of customer total consolidated volume	Rebate for select symbols	Rebate for non-select symbols
Tier 1	0.000%–0.200%	($0.25)	($0.40)
Tier 2	Above 0.200%–0.400%	(0.30)	(0.55)
Tier 3	Above 0.400%–0.450%	(0.35)	(0.70)
Tier 4	Above 0.450%–0.750%	(0.40)	(0.75)
Tier 5	Above 0.750%–1.000%	(0.45)	(0.80)
Tier 6	Above 1.000%–1.350%	(0.48)	(0.85)
Tier 7	Above 1.350%–1.750%	(0.51)	(0.92)
Tier 8	Above 1.750%–2.750%	(0.55)	(1.03)
Tier 9	Above 2.750%–4.500%	(0.56)	(1.04)
Tier 10	Above 4.500%	(0.57)	(1.05)

The above rebates are provided per contract per leg if the order trades with Non-Priority Customer orders in the Complex Order Book. Today, this rebate is reduced by $0.15 per contract in Select Symbols where the largest leg of the Complex Order is under fifty (50) contracts and trades with quotes and orders on the regular order book (the ''Note 1 Rebate Discount''). No Priority Customer Complex Order rebates are provided in Select Symbols if any leg of the order that trades with interest on the regular order book is fifty (50) contracts or more. Lastly, no Priority Customer Complex Order rebates are provided in Non-Select Symbols if any leg of the order trades with interest on the regular order book, irrespective of order size.[12]

Separately, the Exchange currently assesses Complex Order maker and taker fees for Select and Non-Select Symbols based on the pricing schedule below:

MAKER AND TAKER FEES

Market participant	Maker fee for select symbols	Maker fee for non-select symbols	Maker fee for select symbols when trading against priority customer	Maker fee for non-select symbols when trading against priority customer	Taker fee for select symbols	Taker fee for non- select symbols
Market Maker	0.10	0.20	0.50	0.86	0.50	0.98
Non-Nasdaq ISE Market Maker (FarMM)	0.20	0.20	0.50	0.88	0.50	0.98
Firm Proprietary/Broker-Dealer	0.10	0.20	0.50	0.88	0.50	0.98
Professional Customer	0.10	0.20	0.50	0.88	0.50	0.98
Priority Customer	0.00	0.00	0.00	0.00	0.00	0.00

Proposal 1—Regular Priority Customer Maker Rebates in Non-Select Symbols

The Exchange proposes to increase the Regular Order Non-Select Symbol Priority Customer maker rebate in Options 7, Section 3 from $0.86 to $1.00 per contract.

Proposal 2—Note 15 Incentive

The Exchange also proposes to amend the qualifications for the Note 15 Incentive by increasing the volume

[7] A ''Crossing Order'' is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism (PIM) or submitted as a Qualified Contingent Cross order. For purposes of this Pricing Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.

[8] ''Responses to Crossing Order'' is any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM.

[9] ''Customer Total Consolidated Volume'' means the total national volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

[10] *See* Options 7, Section 3, note 15.

[11] Priority Customer Complex Tiers are based on Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume. All Complex Order volume executed on the Exchange, including volume executed by Affiliated Members, is included in the volume calculation, except for volume executed as Crossing Orders and Responses to Crossing Orders. Affiliated Entities may aggregate their Complex Order volume for purposes of calculating Priority Customer Rebates. The Appointed OFP would receive the rebate associated with the qualifying volume tier based on aggregated volume. *See* Options 7, Section 4, note 16.

[12] See Options 7, Section 4, note 1.

threshold from 0.06% to 0.10% of Regular Order Non-Select Symbol Priority Customer volume on ISE (excluding Crossing Orders and Responses to Crossing Orders) calculated as a percentage of Customer Total Consolidated Volume per day in a given month. While the Exchange is increasing the volume threshold in the Note 15 Incentive, the Exchange is not amending the $0.14 per contract additional rebate under this proposal. As such, Members that meet the proposed volume threshold may be eligible for rebates up to $1.14 per contract (*i.e.,* the proposed $1.00 base maker rebate plus the additional $0.14 Note 15 Incentive) on their Priority Customer Regular Orders in Non-Select Symbols that add liquidity on ISE.

Further, the Exchange proposes to link the amended Note 15 Incentive to the Priority Customer Complex Order rebates in Options 7, Section 4, as further described above. Specifically, Members that meet the amended Note 15 Incentive volume requirement (*i.e.,* execute more than 0.10% of regular order Non-Select Symbol Priority Customer volume on ISE (excluding Crossing Orders and Responses to Crossing Orders) calculated as a percentage of Customer Total Consolidated Volume per day in a given month) will also be eligible to receive the Section 4 Priority Customer Complex Order rebates in Select Symbols and Non-Select Symbols that apply to one tier higher than the tier for which they currently qualify. For example, if a Member currently qualifies for Priority Customer Complex Tier 1 AND meets the proposed 0.10% volume requirement in the Note 15 Incentive, that Member will be eligible to receive the Priority Customer Complex Tier 2 rebate for Select Symbols and Non-Select Symbols instead of the Priority Customer Complex Tier 1 rebate for Select Symbols and Non-Select Symbols. The Exchange also proposes that Members that already qualify for the highest Priority Customer Complex Tier (*i.e.,* Tier 10) will instead receive an additional rebate of $0.01 per contract in Select Symbols and Non-Select Symbols because they are already in the highest tier (and therefore unable to receive the benefit of a higher tier).[13]

In connection with linking the Note 15 Incentive with the Priority Customer Complex Order rebates in Options 7, Section 4, the Exchange also proposes to add new note 17 in Options 7, Section 4 that would provide: ''Members that execute more than 0.10% of Regular Order Non-Select Symbol Priority Customer Volume (excluding Crossing Orders and Responses to Crossing Orders) calculated as a percentage of Customer Total Consolidated Volume per day in a given month will be eligible to receive the Priority Customer Complex Order rebates in Select Symbols and Non-Select Symbols that apply to one tier higher than the tier for which they currently qualify, except Members that already qualify for the highest Priority Customer Complex Tier will instead receive an additional rebate of $0.01 per contract in Select Symbols and Non-Select Symbols.'' New note 17 would make clear that the Priority Customer Complex Order rebates in Section 4 are linked to the proposed volume threshold in the note 15 incentive, as further described above.

Proposal 3—Regular Taker Fees in Non-Select Symbols

The Exchange proposes to increase the Regular Order taker fees in note 3 of Options 7, Section 3 for trades in Non-Select Symbols that are executed against Priority Customers. As proposed, Non-Priority Customer orders will be charged a taker fee of $1.25 (increased from $1.10) per contract for trades executed against a Priority Customer. Priority Customer orders will be charged a taker fee of $1.00 (increased from $0.86) per contract for trades executed against a Priority Customer.

Proposal 4—Complex Priority Customer Rebates

The Exchange proposes a number of adjustments to the tiered Priority Customer Complex Order rebates described above. Specifically, the Exchange proposes to increase the Priority Customer Complex Tier 7 rebate in Select Symbols from $0.51 to $0.54 per contract. The Exchange also proposes to increase the Priority Customer Complex Order rebates in Non-Select Symbols as follows: Tier 1 would increase from $0.40 to $0.50 per contract, Tier 2 would increase from $0.55 to $0.60 per contract, Tier 3 would increase from $0.70 to $0.75 per contract, Tier 4 would increase from $0.75 to $0.80 per contract, Tier 5 would increase from $0.80 to $0.85 per contract, Tier 6 would increase from $0.85 to $0.95 per contract, Tier 7 would increase from $0.92 to $1.00 per contract, Tier 8 would increase from $1.03 to $1.10 per contract, Tier 9 would increase from $1.04 to $1.12 per contract, and Tier 10 would increase from $1.05 to $1.15 per contract. The Exchange is amending the rebate amounts without changing the tier qualifications so that Members can send the same amount of order flow as they do today to receive larger rebates described above. Overall, the Exchange believes that these increased Complex Order Priority Customer rebates will attract more Complex Order flow to ISE.

The Exchange also proposes to increase the Note 1 Rebate Discount for smaller-sized Complex Orders in Select Symbols that leg into the regular order book and trade with regular interest. Today, the Note 1 Rebate Discount reduces the Priority Customer Complex Tiers 1–10 rebates for Select Symbols by $0.15 per contract when the largest leg of the Complex Order is under fifty (50) contracts and trades with quotes and orders on the regular order book. The Exchange now proposes to increase this reduction to $0.20 per contract.

Proposal 5—Complex Maker and Taker Fees in Non-Select Symbols

The Exchange proposes to increase the Complex Order maker and taker fees in Non-Select Symbols described above. Specifically, the Exchange proposes to increase the maker fees in Non-Select Symbols when trading against Priority Customers as follows: $0.86 to $1.03 per contract for Market Makers[14] and $0.88 to $1.05 per contract for all other Non-Priority Customers. Further, the Exchange proposes to increase the taker fees in Non-Select Symbols from $0.98 to $1.15 per contract for all Non-Priority Customers. Priority Customers will continue to receive free executions for their Complex Orders.

Proposal 6—Routing Fees

The Exchange proposes to amend the Exchange's Pricing Schedule at Options 7, Section 6.F (Route-Out Fees). The routing fees in this section apply to executions of orders in all symbols that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan.

Today, the Exchange assesses Market Makers, Non-Nasdaq ISE Market Makers (FarMM),[15] Firm Proprietary[16]/Broker-

[13] As discussed later in this filing, the Exchange is also proposing a number of changes to the Priority Customer Complex Order rebates for both Select and Non-Select Symbols in Options 7, Section 4.

[14] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21).

[15] A ''Non-Nasdaq ISE Market Maker'' is a market maker as defined in section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

[16] A ''Firm Proprietary'' order is an order submitted by a member for its own proprietary account.

Dealers [17] and Professional Customers [18] a $0.55 per contract Select Symbol routing fee and a $1.09 Non-Select Symbol routing fee to route to another options exchange. Additionally, today, the Exchange assess Priority Customers a $0.48 per contract Select Symbol routing fee and a $0.70 Non-Select Symbol routing fee to route to another options exchange.

The Exchange now proposes to assess a $0.60 per contract Select Symbol routing fee and a $1.20 Non-Select Symbol routing fee to route to another options exchange, regardless of the capacity of the order. The purpose of the proposed routing fees is to recoup costs incurred by the Exchange when routing orders to other options exchanges on behalf of options Members. In determining its proposed routing fees, the Exchange took into account transaction fees assessed by other options exchanges, the Exchange's projected clearing costs, and the projected administrative, regulatory, and technical costs associated with routing orders to other options exchanges. The Exchange will continue to use its affiliated broker-dealer, Nasdaq Execution Services, to route orders to other options exchanges. Routing services offered by the Exchange are completely optional and market participants can readily select between various providers of routing services, including other exchanges and broker-dealers. Also, the Exchange notes that market participants may elect to mark their orders as ''Do-Not-Route'' to avoid any routing fees.[19] The proposed structure for routing fees is similar to another options market.[20] The Exchange believes that the proposed routing fees would enable the Exchange to recover the costs it incurs to route orders to away markets after taking into account the other costs associated with routing orders to other options exchanges.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[21] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[22] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .'' [23]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [24]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of seventeen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

Proposal 1—Regular Priority Customer Maker Rebates in Non-Select Symbols

The Exchange believes that its proposal to increase the Regular Order Priority Customer maker rebate in Non-Select Symbols from $0.86 to $1.00 per contract is reasonable because Members will be further incentivized to add liquidity in Priority Customer Regular Orders in Non-Select Symbols in order to receive the increased rebate. The Exchange believes that this proposal is equitable and not unfairly discriminatory as all Priority Customers will be uniformly assessed the $1.00 maker rebate. The Exchange further believes that it is equitable and not unfairly discriminatory to provide only Priority Customers with this maker rebate because the Exchange has historically offered more favorable pricing for those market participants. In addition, increased Priority Customer order flow enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants that may trade with this order flow.

Proposal 2—Note 15 Incentive

The Exchange believes that the proposed changes to the Note 15 Incentive are reasonable for the reasons that follow. As discussed above, the Exchange is increasing the volume threshold from 0.06% to 0.10% such that Members would now need to execute more than 0.10% of Regular Order Non-Select Symbol Priority Customer volume (excluding Crossing Orders and Responses to Crossing Orders) calculated as a percentage of Customer Total Consolidated Volume per day in a given month in order to receive an additional rebate of $0.14 per contract. While the volume threshold is increasing under this proposal, the Exchange believes that Members will continue to be incentivized to increase market participation in Non-Select Symbol Priority Customer orders to qualify for the $0.14 additional Note 15 Incentive, especially in light of the significant increase in the base Non-Select Symbol Priority Customer maker rebate to $1.00 per contract as discussed above. Taken together, Members would be able to receive up to $1.14 per contract on their Priority Customer Regular Orders in Non-Select Symbols

[17] A ''Broker-Dealer'' order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

[18] A ''Professional Customer'' is a person or entity that is not a broker/dealer and is not a Priority Customer. *See* Options 7, Section 1(c).

[19] *See* Supplementary Material .04 to Options 3, Section 7.

[20] *See* MEMX's Options Fee Schedule at *https://info.memxtrading.com/us-options-trading-resources/us-options-fee-schedule/.* MEMX assesses a $0.60 per contract Penny Symbol routing fee and a $1.20 Non-Penny Symbol routing fee.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(4) and (5).

[23] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[24] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

that add liquidity on ISE. The Exchange believes that increased Priority Customer order flow in Non-Select Symbols would create additional liquidity to the benefit of all market participants and investors that trade on the Exchange.

The Exchange also believes that linking the proposed volume threshold in the Note 15 Incentive to the Options 7, Section 4 Priority Customer Complex Order rebates in the manner described above is reasonable because the proposal may further incentivize Members to increase market participation in Priority Customer Regular Orders in Non-Select Symbols to receive the next higher Priority Customer Complex Tier rebate than the tier for which they currently qualify (or $0.01 additional rebate if they are already in the highest Priority Customer Complex Tier 10). The Exchange also believes that the proposal would incentivize Members to increase their Priority Customer Complex Order flow in both Select and Non-Select Symbols to the Exchange in order to qualify for a higher Priority Customer Complex Tier (which in turn could set the Member up to receive the next higher Priority Customer Complex Tier rebate—or an additional $0.01 rebate if they are already in Priority Customer Complex Tier 10—if they meet the proposed volume threshold in the amended Note 15 Incentive).

The Exchange believes that the proposed changes to the Note 15 Incentive as discussed above are equitable and not unfairly discriminatory because they will apply uniformly to all similarly situated market participants. The Exchange believes that it is equitable and not unfairly discriminatory to offer the Note 15 Incentive to only Priority Customers because Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Proposal 3—Regular Taker Fees in Non-Select Symbols

The Exchange believes that its proposal to increase the Regular Order taker fees in note 3 of Options 7, Section 3 for trades in Non-Select Symbols that are executed against Priority Customers is reasonable because they are designed to offset the significant incentives that the Exchange is proposing for Priority Customer orders.[25] As discussed above, Non-Priority Customer orders will be charged a taker fee of $1.25 (increased from $1.10) per contract for trades executed against a Priority Customer. Priority Customer orders will be charged a taker fee of $1.00 (increased from $0.86) per contract for trades executed against a Priority Customer. The Exchange believes that Members will benefit from the additional liquidity created by the Priority Customer incentives proposed in this filing, and it is therefore appropriate to charge increased taker fees for trades executed against a Priority Customer.

The Exchange believes that its proposal to increase the taker fees in note 3 of Options 7, Section 3 for trades that are executed against Priority Customers is equitable and not unfairly discriminatory because the changes will apply uniformly to all similarly situated market participants. Priority Customers will continue to be charged a lower taker fee pursuant to note 3 compared to other market participants, which the Exchange believes is equitable and not unfairly discriminatory because the Exchange has historically provided Priority Customers with more favorable pricing. Furthermore, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Proposal 4—Complex Priority Customer Rebates

The Exchange believes that its proposal to increase the tiered Priority Customer Complex Order rebates in the manner discussed above is reasonable because these increased Complex Order Priority Customer rebates will attract more Complex Order flow to ISE to the benefit of all market participants. The Exchange believes that each rebate is set at appropriate levels that will encourage market participants to increase their Priority Customer Complex Order activity on the Exchange. As noted above, the Exchange is amending the rebate amounts without changing the tier qualifications so that Members can send the same amount of order flow as they do today to receive larger rebates described above.

The Exchange also believes that its proposal to increase the Note 1 Rebate Discount for smaller-sized Complex Orders (*i.e.,* largest leg of the order is under fifty contracts) in Select Symbols that leg into the regular order book and trade with regular interest from $0.15 to $0.20 per contract is reasonable because Members will continue to be incentivized to send Priority Customer Complex Order flow to the Exchange despite the increased reduction in order to receive the tiered rebates. Also, the Exchange will continue to pay rebates for Priority Customer Complex Orders of any size that trade with Non-Priority Customer orders in the Complex Order Book, based on the Priority Customer Complex Tier achieved, thereby continuing to incentivize Members to bring Complex Order flow to the Exchange to earn the rebate on their Priority Customer Complex Order volume. Overall, the Exchange believes that the Priority Customer Complex Order rebate program, as modified under this proposal, is reasonable because the program is optional and all Members can choose to participate or not.

The Exchange believes that offering the Priority Customer Complex Order rebate program, as modified, to only Priority Customers is equitable and not unfairly discriminatory as the proposed changes are intended to increase Priority Customer Complex Order flow to ISE. An increase in Priority Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants that may interact with this order flow.

Proposal 5—Complex Maker and Taker Fees in Non-Select Symbols

The Exchange believes that its proposal to increase the Complex Order maker and taker fees in Non-Select Symbols in the manner described above is reasonable because it is designed to offset the significant incentives that the Exchange is proposing for Priority Customer orders.[26] The Exchange believes that Members will benefit from the additional liquidity created by the Priority Customer incentives proposed in this filing, and it is therefore appropriate to charge all Non-Priority

[25] As previously discussed, the Exchange is proposing a significant increase in the base maker rebate provided to Priority Customer Regular Orders in Non-Select Symbols from $0.86 to $1.00 per contract. In addition, the Exchange is linking the Note 15 Incentive to the Section 4 Priority Customer Complex Tier rebates to further incentivize Priority Customer order flow to the Exchange. Finally, the Exchange is increasing the Section 4 Priority Customer Complex Tier rebates without changing the tier qualifications so that Members can send the same amount of order flow as they do today to receive larger rebates.

[26] *See supra* note 25.

Customers increased maker fees for trades executed against a Priority Customer and increased taker fees.

The Exchange also believes that its proposal is equitable and not unfairly discriminatory. As discussed above, the Exchange proposes to increase the maker fees in Non-Select Symbols when trading against Priority Customers as follows: $0.86 to $1.03 per contract for Market Makers and $0.88 to $1.05 per contract for all other Non-Priority Customers. Further, the Exchange proposes to increase the taker fees in Non-Select Symbols from $0.98 to $1.15 per contract for all Non-Priority Customers. Priority Customers will continue to receive free executions for their Complex Orders. Market Makers will continue to be assessed lower maker fees in Non-Select Symbols than other Non-Priority Customers when trading against Priority Customers. The Exchange believes this is equitable and not unfairly discriminatory because Market Makers are subject to additional requirements and obligations (such as quoting obligations) that other market participants are not. In addition, the Exchange believes that it is equitable and not unfairly discriminatory to continue to offer Priority Customers Complex Orders free executions in order to incentivize Priority Customer order flow to ISE. Priority Customer order flow enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants that may interact with this order flow.

Proposal 6—Routing Fees

The Exchange's proposal to amend its routing fees such that all Members would pay a $0.60 per contract Select Symbol routing fee and a $1.20 Non-Select Symbol routing fee to route to another options exchange, regardless of capacity, is reasonable because the proposed routing fees would enable the Exchange to recover the costs it incurs to route orders to away markets after taking into account the other costs associated with routing orders to other options exchanges. Routing services offered by the Exchange are completely optional and market participants can readily select between various providers of routing services, including other exchanges and broker-dealers. Also, the Exchange notes that market participants may elect to mark their orders as ''Do-Not-Route'' to avoid any routing fees. As noted above, the proposed structure for routing fee is similar to another options market.[27]

The Exchange's proposal to amend its routing fees such that all Members would pay a $0.60 per contract Select Symbol Routing Fee and a $1.20 Non-Select Symbol Routing Fee, regardless of capacity, to route to another options exchange is equitable and not unfairly discriminatory because these uniform Routing Fees will apply equally to all options Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

In terms of intra-market competition, the Exchange does not believe that its proposal will place any category of market participant at a competitive disadvantage. While some aspects of the proposal apply directly to Priority Customers (through rebates or more favorable pricing) and Market Makers (through lower Complex Order maker fees when trading against Priority Customers) as discussed above, the Exchange believes that the changes, taken together, will ultimately fortify and encourage activity on the Exchange. As discussed above, all market participants will benefit from any increase in market activity that the proposal effectuates.

Proposal 1—Regular Priority Customer Maker Rebates in Non-Select Symbols

The Exchange does not believe that its proposal to increase the Regular Order Priority Customer maker rebate in Non-Select Symbols from $0.86 to $1.00 per contract will impose an undue burden on intra-market competition all Priority Customers will be uniformly assessed the $1.00 maker rebate. The Exchange does not believe that its proposal to provide only Priority Customers with this maker rebate will impose an undue burden on intra-market competition because the Exchange has historically offered more favorable pricing for those market participants. In addition, increased Priority Customer order flow enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants that may trade with this order flow.

Proposal 2—Note 15 Incentive

The Exchange does not believe that the proposed changes to the Note 15 Incentive as discussed above will impose an undue burden on intra-market competition as the proposal will apply uniformly to all Priority Customers. While the proposed Note 15 incentive will only apply to Priority Customers, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Proposal 3—Regular Taker Fees in Non-Select Symbols

The Exchange does not believe that its proposal to increase the taker fees in note 3 of Options 7, Section 3 for trades that are executed against Priority Customers will impose an undue burden on intra-market competition because the changes will apply uniformly to all similarly situated market participants. Priority Customers will continue to be charged a lower taker fee pursuant to note 3 compared to other market participants, which the Exchange believes is equitable and not unfairly discriminatory because the Exchange has historically provided Priority Customers with more favorable pricing. Furthermore, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Proposal 4—Complex Priority Customer Rebates

The Exchange does not believe that offering the Priority Customer Complex Order rebate program, as modified under this proposal, to only Priority Customers will impose an undue burden on intra-market competition because the proposed changes are intended to increase Priority Customer Complex Order flow to ISE. An increase in Priority Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants that may interact with this order flow.

[27] *See supra* note 20.

Proposal 5—Complex Maker and Taker Fees in Non-Select Symbols

The Exchange does not believe that its proposal to increase the Complex Order maker and taker fees in Non-Select Symbols in the manner described above will impose an undue burden on intra-market competition. As discussed above, the Exchange proposes to increase the maker fees in Non-Select Symbols when trading against Priority Customers as follows: $0.86 to $1.03 per contract for Market Makers and $0.88 to $1.05 per contract for all other Non-Priority Customers. Further, the Exchange proposes to increase the taker fees in Non-Select Symbols from $0.98 to $1.15 per contract for all Non-Priority Customers. Priority Customers will continue to receive free executions for their Complex Orders. Market Makers will continue to be assessed lower maker fees in Non-Select Symbols than other Non-Priority Customers when trading against Priority Customers. The Exchange believes this is equitable and not unfairly discriminatory because Market Makers are subject to additional requirements and obligations (such as quoting obligations) that other market participants are not. In addition, the Exchange believes that it is equitable and not unfairly discriminatory to continue to offer Priority Customers Complex Orders free executions in order to incentivize Priority Customer order flow to ISE. Priority Customer order flow enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants that may interact with this order flow.

Proposal 6—Routing Fees

The Exchange's proposal to amend its routing fees such that all Members would pay a $0.60 per contract Select Symbol routing fee and a $1.20 Non-Select Symbol routing fee to route to another options exchange, regardless of capacity, will not impose an undue burden on intra-market competition because these uniform routing fees will apply equally to all options Members.

Inter-Market Competition

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [28] and Rule 19b–4(f)(2) [29] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–ISE–2023–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–ISE–2023–28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–ISE–2023–28 and should be submitted on or before December 22, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Sherry R. Haywood,

Assistant Secretary.

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[28] 15 U.S.C. 78s(b)(3)(A)(ii).

[29] 17 CFR 240.19b–4(f)(2).

[30] 17 CFR 200.30–3(a)(12).